

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Implementation of Section 402(b)(1)(A) )  
of the Telecommunications Act of 1996 )

CC Docket No. 96-187

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COMMENTS OF U S WEST, INC.

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October 9, 1996

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## SUMMARY

U S WEST, Inc. ("U S WEST") herein comments on the Federal Communications Commission's ("Commission") proposals relating to implementation of Section 402(b)(1)(A)(iii) of the Telecommunications Act of 1996 ("1996 Act"), which provides for streamlined tariff filings by local exchange carriers ("LEC"). In particular, U S WEST agrees with the Commission's interpretation that "deemed lawful," in the context of Section 402, was intended to change current regulatory treatment of LEC tariff filings. Specifically, the language precludes damage claims relating to operation of a tariff which has taken effect. In addition, the 1996 Act deems a tariff to be lawful upon filing rather than upon effectiveness. This leads to U S WEST's support of pre-effective review of tariffs which raise serious questions of lawfulness.

Additionally, U S WEST believes that streamlined treatment of new service tariffs is consistent with the language of the 1996 Act and with the intent of Congress to foster competition. New service tariffs specifically should be subject to a fifteen day effective date and a six-day petition and four-day reply cycle.

U S WEST enthusiastically endorses institution of a process whereby all tariffs, supporting materials and related petitions and other pleadings are filed via electronic mail over the Internet. Numerous technical and security issues must be considered with respect to this method, and U S WEST would be pleased to work with the Commission to resolve such concerns and implement this process.

U S WEST disapproves of the Commission's proposal to require submission of a legal analysis with tariffs subject to streamlined processing. This requirement is superfluous and belies Congress' intent to streamline regulation of tariffs.

Finally, while U S WEST supports giving LECs the option of filing annual access tariffs on seven- or fifteen-days notice, U S WEST objects to the Commission's proposal to require price cap carriers to file Tariff Review Plans ("TRP"), which exclude rate information, prior to the filing of those tariffs. Without rate information, TRPs are meaningless. Therefore, they should be filed simultaneously with the annual access tariff.

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COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby comments on the Federal Communications Commission's ("Commission") implementing proposals relating to Section 402(b)(1)(A)(iii) of the Telecommunications Act of 1996,<sup>1</sup> which provides for streamlined tariff filings by local exchange carriers ("LEC").<sup>2</sup>

I.     LEC TARIFFS ARE LAWFUL UNLESS PROVEN OTHERWISE  
(Notice ¶¶ 7-13)

The Notice appropriately spends considerable analysis on the provision of Section 402(b)(1)(A)(iii) of the 1996 Act which requires that any new or revised "charge classification, regulation, or practice shall be deemed lawful. . . ."<sup>3</sup> As the

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

<sup>2</sup> In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, Notice of Proposed Rulemaking, FCC 96-367, rel. Sep. 6, 1996 ("Notice").

<sup>3</sup> 47 USC § 204(a)(3).

Commission correctly observes, this provision is intended by Congress to change the current regulatory treatment of LEC tariff filings.<sup>4</sup>

In the pre-1996 Act regime, these tariffs were subject to heavy regulation. A tariff filed by a carrier could be deferred for up to 120 days from the filing date for no reason and then suspended for another five months beyond the deferral.<sup>5</sup>

Rejection under the statute is theoretically limited to situations where the tariff filing is so defective as to constitute a “patent nullity,”<sup>6</sup> although the Commission has loosened this standard somewhat in the past.<sup>7</sup> During the pre-effective period (between filing and effectiveness), the burden has been on the carrier to prove the reasonableness of the tariff (or the classification, charge or practice in the tariff).<sup>8</sup>

The Commission could, if it could not resolve a tariff controversy within the statutory 120-day limit, subject to an accounting order, and, upon appropriate findings, order a refund.<sup>9</sup>

In practice, the Commission usually suspended the tariff for a day allowing the tariff to go into effect, subject to an accounting order. An investigation could be ordered simultaneously with the suspension and accounting order. The accounting

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<sup>4</sup> Notice ¶ 7.

<sup>5</sup> See 47 CFR § 61.58(a)(2) and 47 USC § 204(a)(1). U S WEST has questioned the lawfulness of this deferral practice.

<sup>6</sup> Capital Network System, Inc. v. FCC, 28 F.3d 201, 204 (D.C. Cir.), reh’g denied (Sep. 28, 1994).

<sup>7</sup> See id. at 204-06.

<sup>8</sup> 47 USC § 204(a)(1).

<sup>9</sup> Id.

order required the LEC to keep track of all monies received subject to refund at a later date. Even though Congress in its FCC Authorization Act of 1988 required the Commission to issue an order concluding all such hearings within 12 months of the tariff effective date (or 15 months in the case of extraordinary complexity), in reality these investigations have dragged on for years without conclusion.<sup>10</sup>

U S WEST does not agree that such open-ended refund exposure should be lawful.

Once the tariff took effect without an accounting order, the presumptions changed, but the vulnerability of a carrier often increased. Refunds and rejection were no longer regulatory options once a tariff took effect. The customary manner in which the Commission could demand modification of an existing tariff was through the prescription process in Section 205 of the 1934 Act.<sup>11</sup> Prescriptions followed a hearing in which the burden of proof was on the Commission (or other party besides the carrier) to prove that the challenged tariff was not reasonable.<sup>12</sup> Damages actions based on filed tariffs were also permissible, and the Commission has ruled that damages can be awarded for filed rates which were retroactively determined to be too high.<sup>13</sup> Of course, as the Commission observes in the Notice, damages may not be awarded predicated on rates, classifications or practices which

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<sup>10</sup> See, e.g., U S WEST Communications, Inc.'s Transmittal No. 335 (800 Database), Transmittal No. 345 (1993 Annual Access Tariffs for OPEB and Dial Equipment Minutes).

<sup>11</sup> 47 USC § 205(a).

<sup>12</sup> See, e.g., East Tennessee Natural Gas Co. v. F.E.R.C., 863 F.2d 932 (D.C. Cir. 1988).

<sup>13</sup> See 47 USC § 201(b).

had been ordered by the Commission.<sup>14</sup> For rates which had not been prescribed by the Commission, these rates were presumptively lawful in the sense that a challenging party had to prove that they were unlawful, but there was no sort of government sanction of lawfulness upon which a carrier could rely in rebutting evidence of unlawfulness.

Now rates filed by LECs will be “deemed lawful.”<sup>15</sup> The first suggested interpretation of this language in the Notice is that this legal presumption of lawfulness effectively operates to preclude retroactive damages claims based on the operation of a tariff which has taken effect.<sup>16</sup> In other words, actions for what are commonly known as “reparations” would be precluded unless a carrier chose to ignore a Commission finding of unlawfulness and continued the challenged practice after the finding.<sup>17</sup> In other words, a filed tariff would be effectively lawful in very much the same manner as if it had been prescribed by the Commission.<sup>18</sup> This interpretation is a reasonable one. As the statute now imposes a presumption of lawfulness on the effective tariff, it would not make sense to permit others to collect damages based on its operation. Indeed, the notion of damages based on rates which were “too high” has always been a troubling one, and, in other statutory contexts, has been rejected by the Supreme Court.<sup>19</sup> There is nothing at all unusual

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<sup>14</sup> Notice ¶ 9.

<sup>15</sup> We note that the statute applies to all LECs, not just incumbent LECs.

<sup>16</sup> Notice ¶ 9.

<sup>17</sup> Id. ¶ 10.

<sup>18</sup> Id. ¶ 9.



or troubling about a customer not being able to challenge on a retroactive basis the price paid for goods or services.

On the other hand, we do not suggest that the fact that the tariff is deemed lawful under the law amounts to a permanent governmental blessing of all aspects of the tariff for all time. There are several significant limitations on the Congressional designation of lawfulness of LEC tariffs in the 1996 Act. First, as the Notice observes, the Commission still has the right to declare a tariff unlawful, either in a complaint proceeding under Section 208 of the Communications Act<sup>20</sup> or in a Section 205 prescription proceeding.<sup>21</sup> As has been the case in the past, the Commission or complaining party would need to prove the unlawfulness of the challenged practice, and the full panoply of prospective statutory remedies already available in the case of a tariff found to be unlawful would remain.

Second, the statutory finding of lawfulness extends only to lawfulness under the 1996 Act. There seems to be no reason why it should be assumed that Congress sought to immunize all actions taken by a LEC from liability arising under any law or statute. This presumption of lawfulness is significant, because so much LEC activity is still conducted pursuant to tariff. But it still does not extend beyond the scope of the Communications Act itself.

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<sup>19</sup> See, e.g., Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 578-82 (1981).

<sup>20</sup> Notice ¶ 8. In order to bring a legally sufficient complaint, the complaining party does not have to allege monetary damages.

<sup>21</sup> Id.

The second approach to the “deemed lawful” language in the 1996 Act is that it modifies the “suspension and investigation” burdens on the Commission and complaining parties.<sup>22</sup> The Commission analogizes this interpretation to the “no suspension zone” established for price cap tariff filings consistent with the price cap formulas.<sup>23</sup> While U S WEST agrees that the price cap approach to tariff filings has been successful in dealing with those tariff filings to which it applies, and strongly agrees that the approach should be continued, this interpretation of the statutory language seems slightly off the mark. Tariff suspensions are interlocutory decisions entrusted to the unreviewable discretion of the Commission.<sup>24</sup> Thus, the Commission, for better or worse, can set whatever suspension standards it likes (so long as it does not create a rule which itself violated the statute, such as at issue in the “pre-effectiveness review” rule involving AT&T’s tariff).<sup>25</sup> If a U S WEST tariff is suspended, U S WEST has no recourse to challenge the suspension.<sup>26</sup> There is no indication that the 1996 Act intended to change that situation and give U S WEST meaningful review rights when a tariff is suspended. Accordingly, the “deemed lawful” language of the 1996 Act cannot realistically be read as changing, as a

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<sup>22</sup> Notice ¶ 12.

<sup>23</sup> In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, 6 FCC Rcd. 2637, 2643 ¶ 13 (1991).

<sup>24</sup> See, e.g., Papago Tribal Util. Auth. v. FERC, 628 F.2d 235, 246-47 (D.C. Cir.), cert. denied, 449 U.S. 1061 (1980); Associated Press v. FCC, 448 F.2d 1095, 1104 (D.C. Cir. 1971).

<sup>25</sup> See, e.g., American Tel. & Tel. Co. v. FCC, 487 F.2d 865 (2d Cir. 1973).

<sup>26</sup> See note 24, supra.

matter of law, the suspension and investigation standards of the Communications Act. We do suggest, however, that the Commission use this proceeding as the appropriate vehicle in which to modify the standards which must be met by an entity challenging the filed tariff of a LEC to conform to the standards now applicable to non-dominant carriers: a) high probability of unlawfulness, b) irreparable injury, and c) public interest.

However, we submit that the language does alter the burdens in reviewing a filed but not yet effective tariff. The standards for suspending a tariff are different, as a matter of legal principles, from the standards for determining the lawfulness or unlawfulness of a tariff. As noted previously, in any hearing on a tariff, the filing carrier has historically had the burden of proving that its own filed tariff was lawful. The 1996 Act deems a tariff filing to be lawful upon filing, not simply upon effectiveness. Thus, the 1996 Act shifts the burden of proof as to lawfulness for a filed, but not effective tariff. The Commission would still have the right, in an individual proceeding, to require that a filing carrier demonstrate the lawfulness of a particular provision of a tariff (the burden of proof language in Section 204 of the Communications Act remains), but, in the absence of such specific designation of burden on a particular issue, the tariff would be deemed lawful as filed prior to effectiveness.

## II. EXCLUSIVE RELIANCE ON POST-EFFECTIVE REVIEW IS NEITHER WISE NOR NECESSARY (Notice ¶¶ 23-25)

The Notice asks the question of whether, given the truncated time frames for pre-effective review of tariffs, it might not be better to rely exclusively on post-effective review of LEC tariffs.<sup>27</sup> The Notice then asks the obvious question of what impact such exclusive reliance on post-effective review might have on the rights of complaining parties -- given the fact that the “deemed lawful” language of the 1996 Act cuts off the availability of reparations.<sup>28</sup> We submit that pre-effective review is an important way to deal with tariffs which raise serious questions of lawfulness and reasonableness for that very reason. Once a LEC tariff has taken effect, all remedies are prospective only. The 1996 Act continues the Commission’s statutory rights to suspend a tariff, to conduct an investigation, and, upon proper suspension and accounting order, to order refunds. While the Commission’s staff and complaining parties will need to act quickly in the case of a LEC tariff they find questionable, this is as it should be, because only serious questions of lawfulness should result in a pre-effective suspension. Thus, while most regulatory activity concerning LEC tariffs will be post-effective date, the Commission should not seek to eliminate the pre-effective date procedures, because they provide an important procedural vehicle for refunds or other protections against truly unreasonable tariffs.

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<sup>27</sup> Notice ¶¶ 23-24.

<sup>28</sup> Id. ¶ 23.

### III. ELIGIBILITY AND ADMINISTRATION ISSUES (Notice ¶¶ 18-31)

#### A. Application To All Tariffs (Notice ¶ 18)

The Commission seeks comment on the appropriate treatment of tariffs for new services. There is no question that tariffs for new services should be reviewed under the streamlined procedures. Not only does the plain language of the 1996 Act clearly require it, but doing so will serve the public interest by expediting new services to the public, consistent with general Commission policy<sup>29</sup> and the 1996 Act.

Section 204(a)(3) states that all tariffs are eligible for streamlined filing:

A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective [seven or fifteen days] after the date on which it is filed. . . .<sup>30</sup>

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<sup>29</sup> See, e.g., In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd. 3271, 3281 ¶ 12 (1995)(Commission allows AT&T to file tariffs that are presumed lawful on one-day's notice because doing so will expedite the delivery of new services to consumers); In the Matter of Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Notice of Proposed Rulemaking, 9 FCC Rcd. 7665 (1994)(Commission concludes that accelerated processing permitted by electronic filing and data collection, along with competitive bidding procedures will generally expedite the initiation of new service); In re Applications of Great Lakes Broadcasting, Inc., et al., Memorandum Opinion and Order, 6 FCC Rcd. 4331 (1991)(The provisions of 47 CFR § 1.229 concerning late-filed petitions are strictly enforced in order to expedite the hearing process and the institution of new service.).

<sup>30</sup> 47 USC § 204(a)(3) (emphasis added).

The language does not say that a new or revised charge, classification, regulation or practice of existing services shall be eligible for streamlined filing. The language refers to any new charge, classification, regulation, or practice. A new service certainly fits within the category of a new charge, classification, regulation or practice.

U S WEST agrees that since such new services more closely align with rate increases, subjecting such filings to the fifteen-day effective period is appropriate.<sup>31</sup> That is, a new charge corresponds to rate increases in that where there was no rate previously, there is now a rate.

Streamlined treatment of new services is consistent with the intent and the Commission's obligations under the 1996 Act. Such treatment facilitates competition because it allows LECs to respond more quickly to changing market conditions, including the introduction of new services by competitors, and rewards innovation. Restrictive notice periods which allow competitors to offer competing services before the LEC can, simply because the LEC is subject to regulations preventing it from immediately offering services, are clearly not in the public interest.

U S WEST submits that the Commission should look to its Order regarding non-dominant carrier tariff filing requirements as a model for LEC streamlined

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<sup>31</sup> U S WEST additionally proposes that new service tariff filings be subject to six- and four-day petition and reply periods, respectively. See infra Section III, subpart F. Of course, the length of the petition and reply cycle does not affect the Commission's authority under Section 204(a) to investigate the lawfulness of a tariff.

tariff regulation.<sup>32</sup> In that proceeding, the Commission found that, pursuant to the Communications Act, certain carriers should not be subject to burdensome tariff filing requirements because these requirements inhibit competition and impose additional costs and administrative burdens upon carriers, both of which are ultimately incompatible with the public interest.<sup>33</sup> By the authority of Section 402(a)(3), the Commission should similarly conclude that additional regulation (beyond that which is explicitly authorized in the 1996 Act) applied to LEC streamlined tariff filings will not encourage reduced rates nor true competition. Rather, reduced regulation advances the public interest.

B. Forbearance Authority (Notice ¶ 19)

The Commission questions whether Section 204(a)(3) precludes it from exercising its forbearance authority under Section 10(a) of the 1996 Act. It does not. Section 10(a) provides the Commission with flexible forbearance authority:

[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, [subject to three conditions].<sup>34</sup>

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<sup>32</sup> In the Matter of Tariff Filing Requirements for Nondominant Common Carriers, Memorandum Opinion and Order, 8 FCC Rcd. 6752 (1993)(“Nondominant Tariff Order”).

<sup>33</sup> Id.

<sup>34</sup> 47 USC § 10(a) (emphasis added).

Thus, the Commission has forbearance authority with respect to any part of the Communications Act of 1934, as amended, including Section 204(a).

C. Electronic Filings (Notice ¶¶ 21-22)

U S WEST concurs with the Commission that electronic filing of tariffs can significantly further the Congressional purpose of streamlining the tariff process. Further, savings in paper, document storage and postage and/or overnight mail costs can be realized if tariffs and related filings are served and filed by electronic means.<sup>35</sup> U S WEST would be pleased to demonstrate to the Commission and the public (by means of a workshop or technical trial) how the proposals discussed below could implement a fair and efficient electronic tariff filing and review process.

U S WEST proposes that the Commission set up a specific location on the worldwide web for carriers, using File Transport Protocol ("FTP") to transfer tariffs, supporting documents and pleadings related to tariffs to the Commission's file server. Passwords and user names would be required to prevent tampering with deposited documents. A Commission-appointed "webmaster" could be responsible for uploading tariff filings to company-specific web pages and storing "source" documents in case a security problem arose on the publicly-viewed copy.<sup>36</sup>

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<sup>35</sup> U S WEST advocates eliminating all paper filings, with the exception of confidential tariff supporting materials.

<sup>36</sup> Of course, several other issues must be resolved before the Commission adopts electronic mail as a standard filing and service format (e.g., liability relating to security breaches, official filed copy, service attainment, etc.).



The site would be accessible 24 hours a day, 7 days a week, and a help desk available at a minimum during the Commission's regular business hours would be optimal. If electronic filing replaces paper filing, back-up provisions should be established in the event that the web site is out of service.<sup>37</sup>

In order to make files uniformly accessible, without forcing viewers to purchase specific word processing and/or spreadsheet applications, U S WEST proposes that the Commission provide carriers with the option to file all tariff-related filings (i.e., tariffs, supporting documentation, pleadings) in either of two of the Internet's standard formats: Hypertext Markup Language ("HTML") or Portable Document Format ("PDF").<sup>38</sup> Filing in either of these two standard formats will allow for consistency in viewing. Also by using HTML or PDF, filing carriers will not be locked into a specific operating system or software application. In addition, data from HTML and PDF files can be copied and pasted into other applications for purposes of industry analysis, for example.

Today, tariffs and many of the supporting documents are prepared in complex word processing and/or spreadsheet applications. Complex documents should be filed in PDF since the application produces near perfect image of the

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<sup>37</sup> In such cases, the Commission could provide for the filing of a paper copy petition, for example, within two days after the normal due date.

<sup>38</sup> In the past, the Commission has required that documents be filed using MS DOS 5.0 and WordPerfect 5.1 software. These requirements are unduly burdensome for carriers that do not use either the operating system or software. Requiring carriers to use a specific operating system and/or word processing/spreadsheet application does not allow for the flexibility necessary to move forward with ever-changing technology.

original document and retains the document's format. Acrobat Exchange, an Adobe Systems, Inc. software, creates basic PDF files. Creating a PDF file in Acrobat Exchange can be as simple as opening the original file and saving the file to a PDF print file. The software application costs less than \$200. Acrobat Exchange also contains a PDF viewer application, however, for those who only need to view; the software application is free from Adobe and can be downloaded from their website. A link between the Commission's web page and Adobe's, along with a few instructions on setting up the user's browser, will make this process user-friendly.

Petitions and pleadings are generally non-complex word processing documents and lend themselves to either HTML or PDF. With respect to Tariff Review Plans (or "TRP"), which are currently created in version 3.1<sup>39</sup> of Lotus 1-2-3, U S WEST proposes that two versions be filed: one in PDF for posting to the web and the other in a Commission-designated spreadsheet application for electronic analyses and manipulation by the Commission.

Finally, the Commission's proposal in paragraph 26 of the Notice to provide affirmative notice to interested parties would be unnecessary if electronic filing via the Internet was required. Interested parties could simply check the appropriate Internet site to determine if a filing had been made.

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<sup>39</sup> An archaic version of Lotus 1-2-3 required for use by the Commission..

D. Legal Analysis (Notice ¶ 25)

While U S WEST supports pre-effective date tariff review (as discussed above), U S WEST does not support the proposed requirement that LECs file a legal analysis with their tariffs. The current requirements for tariff filings are entirely adequate for parties to determine if there is reason to question the lawfulness of a particular filing.

The Description and Justification and accompanying transmittal letter include information summarizing basic terms and conditions and their effect upon existing terms and conditions. In addition, applicable Commission rules are specified, and the tariff's impact on customers is also explained. Moreover, Section 61.2 of the Commission's Rules requires that: "in order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations,"<sup>40</sup> and Section 61.54(j) states, in pertinent part, that: "the general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitively."<sup>41</sup>

Section 204(a) endeavors to expedite the tariff review process and thus the introduction of new or revised telecommunications offerings. The proposed legal analysis filing requirement needlessly frustrates that purpose. Moreover, the

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<sup>40</sup> 47 CFR § 61.2.

<sup>41</sup> Id. § 61.54(j).

Commission's proposed requirement could be read to change the presumption of lawfulness to one of unlawfulness, a result clearly at odds with the 1996 Act's language.

If a carrier's Description and Justification and accompanying transmittal are adequate, the Commission can make a determination as to the tariff's lawfulness. Likewise, customers are given sufficient information within the Description and Justification to evaluate the tariff's impact upon them. On the other hand, if the Description and Justification and accompanying transmittal are inadequate (*i.e.*, unclear and/or ambiguous), the Commission can request more information (including a legal analysis) and can reject, or suspend and investigate the tariff for (at the least) violating Sections 61.2 and 61.54.<sup>42</sup>

E. Tariff Review Plans (Notice ¶¶ 30-31)

U S WEST agrees with the Commission that annual access tariffs should be subject to streamlined filing and that carriers should be provided with the option of filing such tariffs either seven or fifteen days prior to July 1. U S WEST disagrees, however, with the Commission's proposal to require carriers to file TRPs, excluding proposed rate information, prior to the filing of the annual tariff revisions. This proposal is illogical.

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<sup>42</sup> See, e.g., In the Matter of Southwestern Bell Telephone Company Tariff FCC No. 73, Memorandum Opinion and Order, 11 FCC Rcd. 3613 (1996); In the Matter of Capital Network Systems, Inc., Tariff FCC No. 2, Memorandum Opinion and Order, 7 FCC Rcd. 8092 (1992); In the Matter of Transmittal No. 988, GTE Telephone Operating Companies, Order, 11 FCC Rcd. 3698 (Com. Car. Bur. 1995).

Without proposed rates, filing of the TRP serves little purpose, as the information contained therein would have little meaning. The proverbial cart will be placed before the horse. That is, the TRP, without rate information, will provide only Price Cap Indices ("PCI") and exogenous cost information (assuming National Exchange Carrier Association Long Term Support information is available). Since exogenous cost information is narrowly defined in Section 61.45(d)(1) of the Commission's rules, it is rarely subject to question. Even PCIs could not be calculated if complete exogenous cost adjustment figures are not available. If they can be included, PCIs are calculated using set formulas that can be easily verified. (Additional time is not necessary for such verification.) Finally, Actual Price Indices cannot be calculated (and included) without rate information. In other words, the TRP is, for all practical purposes, meaningless. Accordingly, TRPs should be tied to Section 204(a) and filed simultaneously with all filings requiring TRPs.

F. Miscellaneous

- Notice ¶ 6 - U S WEST agrees with the Commission's conclusion that Congress did not intend for the Commission to defer tariffs eligible for streamlined filing. The 1996 Act affords a seven/fifteen-day filing-to-effective date time frame and only five months for suspension and investigation prior to an order concluding the investigation. No provision has been made for any deferral.

- Notice ¶¶ 19, 34 - The Commission concludes that if LECs choose not to file a particular tariff under the streamlined rules, that tariff would not be “deemed lawful.” U S WEST strongly objects to this approach. A carrier should not be “punished” for providing potential customers and competitors added review time.<sup>43</sup> LECs should be permitted to file on any notice period greater than that provided for in Section 204(a) as long as it is consistent with Commission rules. Availing oneself of such flexibility, however, should not result in any loss of the rights and prerogatives that attend streamlined filings.
- Notice ¶ 26 - U S WEST agrees with the Commission that:
  - 1) rate increases should be subject to fifteen-day notice, rate decreases should be subject to seven-day notice, and tariffs which contain both a decrease and an increase should be subject to fifteen-day notice;
  - 2) tariff transmittals, filed pursuant to Section 204(a)(3), should identify that authority as well as indicate that the tariff contains rate increases, rate decreases or both; and

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<sup>43</sup> U S WEST notes that the choice to exceed the notice period usually coincides with filing an equivalent tariff in a state venue or with a desire to give customers additional notice.

3) the statutory seven- and fifteen-day notice periods refer to calendar days, not working or week days.

- Notice ¶ 28 - U S WEST agrees that petitions filed against seven-day streamlined tariffs must be filed within three days of the tariff filing date and replies must be filed two days thereafter. With respect to new services, for which U S WEST has proposed a fifteen day effective period (see supra Section III. A), U S WEST supports a six-day petition and a four-day reply cycle.
- Notice ¶ 28 - With respect to the Commission's proposal to require that petitions and replies be hand-delivered, U S WEST notes that while hand delivery may not be cumbersome for large entities such as U S WEST, such a requirement may prove difficult for small customers or interested parties who do not have a presence in Washington, D.C. or close to LEC headquarters. Even large LECs may have difficulty in making hand-deliveries to petitioning parties in small rural towns and in large cities in which it does not have a presence. As such, and given the very short pleading cycles required under the statutory effective dates, the Commission should require all Tier-1 LECs to post their tariffs on their own website and serve pleadings via the Internet. The Commission should provide all other carriers and interested parties with the option of providing service of petitions and replies via electronic mail over the Internet.

- Notice ¶ 28 - U S WEST submits that public comment during the notice period is absolutely necessary to comply with the intent of Congress to streamline regulation. Congress did not foreclose the right of parties to comment on tariff filings prior to the effective date and such comment should be an integral part of the Commission's decision-making process in determining whether to reject or suspend and investigate a particular tariff filing.
- Notice ¶ 33 - U S WEST does not object to the Commission's proposal that it terminate investigations by a pro forma order that adopts a decisional memorandum or order of the Common Carrier Bureau, provided that such an order is in fact a full Commission determination of the lawfulness of the tariff and thus a final appealable order. It is not necessary that the Commission write its own order, so long as it adopts the order.
- Notice ¶ 33 - U S WEST fails to see a need for the establishment of informal mediation procedures for tariffs subject to investigation. The Commission's review and petition procedures provide interested parties meaningful participation. Additional processes will only delay introduction of new services, contrary to the intent of Section 204(a) and the public interest.




IV. CONCLUSION

For the foregoing reasons, U S WEST supports many of the Commission's proposals -- with the delineated modifications -- as being consistent with the intent of the 1996 Act to streamline tariff filing requirements for LECs as a means to fostering competition.

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